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MICHAEL RODAK, JR., CL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-5038

ELIZABETH CHAVEZ, et al., *Petitioners,*

v.

FRESHPICT FOODS, INC., et al., *Respondents.*

LEONEL SANCHEZ, et al., *Petitioners,*

v.

GREAT WESTERN EMPLOYMENT AGENCY, INC., *Respondent.*

CARLOS OLGUIN, et al., *Petitioners,*

v.

FRESHPICT FOODS, INC., and IMPERIAL VALLEY FARMERS ASSOCIATION, *Respondents.*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF OF RESPONDENTS GREAT WESTERN SUGAR COMPANY, GREAT WESTERN EMPLOYMENT AGENCY, INC., AND FRESHPICT FOODS, INC., IN OPPOSITION

PETITION NOT PRI

William C. McClearn
David G. Palmer
500 Equitable Building
Denver, Colorado 80202
Attorneys for Respondents
Great Western Sugar Company,
Great Western Employment
Agency, Inc., and Freshpict Foods,
Inc.

Of Counsel:
HOLLAND & HART

BRADFORD PRINTING, DENVER

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BRIEF OF RESPONDENTS GREAT WESTERN SUGAR COMPANY, GREAT WESTERN EMPLOYMENT AGENCY, INC., AND FRESHPICT FOODS, INC., IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Respondents Great Western Sugar Company, Great Western Employment Agency, Inc. and Freshpict Foods, Inc., respectfully submit this brief in opposition to the petition for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Tenth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Tenth Circuit is reported at 456 F.2d 890 and is included as Appendix A to the petition for a writ of certiorari. The opinion of the United States District Court for the District of Colorado in *Chavez, et al. v. Freshpict Foods, Inc., et al.*, No. 71-1177 in the Court of Appeals, is reported at 322 F. Supp. 146 and is included as Appendix B to the petition for a writ of certiorari. The United States District Court for the District of Colorado did not enter written opinions in *Sanchez, et al. v. Great Western Employment Agency, Inc.*, No. 71-1286 in the Court of Appeals, or in *Olguin, et al. v. Freshpict Foods, Inc., et al.*, No. 71-1300 in the Court of Appeals.

JURISDICTION

The opinion of the Court of Appeals was entered on March 13, 1972, and the petition for rehearing and request for rehearing en banc was denied on April 10, 1972. The petition for a writ of certiorari is dated July 5, 1972, and copies thereof were received by counsel for these respondents on July 13, 1972. An extension of time to September 11, 1972, in which to file briefs in opposition was sought and obtained by respondents.

Petitioners seek to invoke the jurisdiction of this Court pursuant to 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Should a right to maintain private actions for actual and exemplary damages and for injunctive relief be created by implication under specified sections of the Immigration and Nationality Act, 8 U.S.C. §1182(a)(14), 8 U.S.C. §1325, in favor of persons who identify themselves as domestic farm workers or workers in agriculturally-related industries, against persons who are alleged to have employed aliens illegally present in the United States under the following circumstances:

(a) the statute provides that it shall be administered and enforced only by the Department of Justice and other agencies of the United States;

(b) although the statute and its predecessors have been in effect and subjected to numerous amendments over the past 150 years, no language in the statute, no evidence of Congressional intent, and no prior judicial authority sanctions the implication of a right to bring private damage actions against persons who are alleged to have employed aliens who have entered this country in violation of the statute;

(c) the basis for the attempt to create private causes of action by implication is not the inadequacy of the statutory scheme, but is instead the alleged inadequacy of staff, inefficiency or ineffectiveness of the federal agency specifically charged with its enforcement;

(d) the petitioners, or those purporting to act on their behalf, are seeking legislation by the United States Congress which could establish by

statute or amendment the legal principle and cause of action which they are asking this Court to create by implication.

2. Should a right to maintain private actions for damages be created by implication under specified sections of the Farm Labor Contractor Registration Act, 7 U.S.C. §§2041-2053, under the following circumstances:

(a) administration and enforcement of the statute is expressly vested only in the Department of Labor;

(b) neither the statute nor its legislative history contain any evidence of an intent by Congress that private damage actions for alleged violations of the statute may be maintained;

(c) petitioners have available to them and have pleaded in this action alternative remedies under state law and state statutes based upon the same allegations as are claimed to create, by implication, private rights of action for damages under the federal statute.

3. Whether enforcement of the asserted but legislatively withheld rights of enforcement of remedies by private plaintiffs is an impermissible addition of private litigants, either individually or as a class, to those expressly clothed with the prosecutional function; and whether judicial recognition would violate the constitutional separation of powers and impinge upon the constitutional prerogatives of the legislative and executive departments of the Government of the United States.

STATUTES INVOLVED

In addition to those statutes cited by petitioners, also applicable herein is 8 U.S.C. § 1324, which provides that employment shall not be deemed to constitute "harboring" of aliens illegally in this country. Petitioners below also relied upon 8 U.S.C. §1101(a)(15)(H)(ii), a provision of the immigration laws which defines certain temporary laborers as "nonimmigrant aliens". Petitioners below in *Olguin, et al.* and *Sanchez, et al.*, Nos. 71-1300 and 71-1286, also stated an alternative claim under 1963 Colo. Rev. Stat. Anno. §§ 80-11-4, 80-11-7, which expressly provide a civil action for damages based upon misrepresentations of employment opportunities.

ADDITIONAL STATEMENT OF THE CASE

In *Chavez, et al.*, No. 71-1177 below, petitioners are 16 persons who allege that they are farm workers and citizens of the United States. They seek to maintain this suit not only on behalf of themselves, but also on behalf of a purported class which they define as "all other employed and unemployed domestic farm workers" in 26 Colorado counties.

Respondents are alleged to be employers of agricultural workers and workers in agriculturally-related industries whose employees have included Mexican nationals who have entered the United States in violation of various provisions of the Immigration and Nationality Act, Chapter 12 of Title 8, United States Code. Petitioners contend that the employment of illegal entrants with either actual or constructive knowledge of their illegal status creates by implication, under the federal immigration laws, private rights of action for damages, both actual and exemplary, and for injunctive relief. Petitioners also seek a mandatory injunction requiring respondents to obtain valid alien registration or

social security cards, drivers' licenses or other proof of residence prior to the employment of laborers, and to maintain and furnish to petitioners a record of such indicia of residence. In essence, petitioners assert that the federal immigration laws impliedly confer upon them the right to bring a private civil action to enforce the provisions of those statutes and to obtain damages from respondents.

The United States District Court for the District of Colorado dismissed petitioners' claims, ruling that the federal immigration laws did not, either expressly or by implication, indicate an intention by Congress to authorize private civil actions to enforce the immigration laws or to recover damages for their alleged violation. This decision was affirmed on appeal to the United States Court of Appeals for the Tenth Circuit. In its opinion, the Court of Appeals stressed that administration and enforcement of the statute was vested in various agencies of the United States, the absence of any indication that Congress intended to permit private civil actions to be brought under the statute, and the fact that Congress presently has under consideration proposed legislation which would create the remedies which petitioners in this proceeding are seeking to have created by implication. (A. 21-24).

Olguin, et al., and *Sanchez, et al.*, Nos. 71-1300 and 71-1286 below, consolidated in the Court of Appeals, both involved claims that private damage actions may be maintained, by implication, for alleged violations of the Farm Labor Contractor Registration Act, 7 U.S.C. §§2041-2053. Although these suits were separately instituted and involve differing facts, petitioners in both cases seek recovery of damages based on alleged misrepresentations of employment opportunities by these respondents. Each complaint

seeks damages (a) for alleged violation of the Farm Labor Contractor Registration Act, (b) for breach of employment contracts, and (c) for violation of Colorado statutes, 1963 Colo. Rev. Stat. Anno. §§ 80-11-4 and 80-11-7. In addition, the petitioners in *Sanchez, et al.*, assert a fourth claim based upon alleged negligent misrepresentations.

Petitioners' claims were denied by the United States District Court for the District of Colorado, which held that private damage actions may not be maintained under the Farm Labor Contractor Registration Act and that federal jurisdiction was therefore lacking. The District Court did not reach additional preliminary defenses raised by respondents, based upon lack of subject matter and personal jurisdiction, denial that respondents were registered farm labor contractors, and res judicata based upon prior state court litigation between some of the parties.

The Court of Appeals affirmed, holding that neither the statute nor its legislative history gave any indication of a Congressional intent to authorize, either expressly or by implication, private damage actions, and emphasizing the availability to petitioners of state remedies. (A. 24-25).

REASONS WHY THE WRIT SHOULD BE DENIED

The decision of the Court of Appeals was correct and in accord with established precedent of this Court and other federal appellate courts. The basis for petitioners' claims is their dissatisfaction not with the statutory schemes themselves, but with their administration and enforcement by the respective agencies involved in each case. Petitioners seek to by-pass the extensive and detailed enforcement procedures entrusted by Congress to these agencies, to find a Congressional purpose sanctioning private litigation for the

enforcement of such statutes where no such purpose existed, and to ignore fundamental considerations of policy grounded on the separation of the legislative and judicial processes.

1. The decision below does not conflict with the decisions of the appellate courts or of this court.

The ruling below by the United States Court of Appeals for the Tenth Circuit does not conflict with the appellate decisions relied on by petitioners. It is true, as petitioners suggest, that in limited instances federal courts have created by implication privately enforceable causes of action under federal regulatory statutes. Nor could petitioners deny, on the other hand, that in many instances the implication of private actions has been refused. *See, e.g., Nashville Milk Co. v. Carnation Co.*, 355 U.S. 373 (1958); *T.I.M.E., Inc. v. United States*, 359 U.S. 464 (1959); *Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U.S. 246 (1951). Respondents submit that the decision herein is in accord with the principles and criteria developed by each of these cases.

The cases on which petitioners rely involved unusual or limited factual or statutory situations not present in this case. For example, *J. I. Case Co. v. Borak*, 377 U.S. 426 (1964), implied a private civil action for damages under the Securities Exchange Act of 1934. However, that statute and its legislative history contain express and affirmative evidence that Congress foresaw and intended private enforcement, as indicated by § 29(b) of the Act which provides that every contract "made in violation [of any section of the Act] shall be void." 48 Stat. 903 (1934), as amended, 15 U.S.C. § 78cc(b). That Congress intended private enforcement of the Securities Exchange Act is further supported by

the 1938 amendment to the Act which stated that certain contracts were void whenever made in violation of the Act "in any action maintained in reliance on this subsection." 52 Stat. 1076 (1938), as amended, 15 U.S.C. § 78cc(b).

Texas & Pac. Ry. v. Rigsby, 241 U.S. 33 (1916), contains broad and general language supportive of petitioners' position. However, later decisions of this and other courts have held that a private damage action under the statute involved in *Rigsby*, the Federal Safety Appliances Act, does not state a federal question and that jurisdiction must be based on diversity of citizenship—a ground not available to petitioners here. *Moore v. Chesapeake & O. Ry.*, 291 U.S. 205, 214-15 (1934); *Jacobsen v. New York, N.H. & H.R.R.*, 206 F.2d 153 (1st Cir. 1953), *aff'd per curiam*, 347 U.S. 909 (1954). *Cf. Andersen v. Bingham & G. Ry.*, 169 F.2d 328 (10th Cir. 1948).

Gomez v. Florida State Employment Service, 147 F.2d 569 (5th Cir. 1969), is also inapposite. In *Gomez*, the Court of Appeals emphasized that there existed no remedy whatsoever under the pertinent statute, the Wagner-Peyser Act, 29 U.S.C. § 49 *et seq.* As stated by the Court, "[a]bsent an implied remedy the workers have no protection. . . . not even the protection of a criminal sanction." 417 F.2d at 576. Of course, in the instant case, a great variety of sanctions are available under both the immigration laws and the Farm Labor Contractor Registration Act. *See, e.g.*, 8 U.S.C. §§ 1321-28, 1221, 1226, 1227, 1229, 1252, 1253, 1281, 1284-86; 7 U.S.C. §§ 2044(b), 2046, 2048; 29 C.F.R. § 40.1 *et seq.* In *Gomez*, on the other hand, responsibility for enforcement of the Wagner-Peyser Act had been entrusted to the states, and the Secretary of Labor's only recourse for violations of the Act was the cutting off of federal funds to those state agencies. Moreover, based on

allegations of a conspiracy involving state officials, the *Gomez* court found 42 U.S.C. § 1983 to provide a separate statutory basis for the damage claim in that case. 417 F.2d at 578.

Shortly after its decision herein, the Court of Appeals for the Tenth Circuit reversed the United States District Court for the District of Colorado, which had ruled that a private cause of action would not be implied under certain provisions of the Hill-Burton Act, 42 U.S.C. § 291 *et. seq. Euresti v. Stenner,* 458 F.2d 1115 (10th Cir. 1972), *rev'g* 327 F. Supp. 111 (D. Colo. 1971). Petitioners incorrectly assert that the *Euresti* decision is inconsistent with the Court's decision in this case. Analysis of the *Euresti* opinion discloses that that decision is fully in accord with the opinion herein, as well as the *Gomez* decision, *supra,* on which petitioners so heavily rely.

Most notably, neither the Hill-Burton Act nor the Wagner-Peyser Act contain any enforcement provisions or sanctions other than the cutting off of federal funds to the state agencies involved in each instance. *See Gomez, supra,* 417 F.2d at 576; *Euresti, supra,* 458 F.2d at 1119. In contrast, both the immigration laws and the Farm Labor Contractor Registration Act contain a variety of express administrative and penal sanctions.

Moreover, the plaintiffs in *Euresti* did not seek to recover any damages, but rather alleged that they were third party beneficiaries of the funding contract entered into by the state and federal government which, as in *Gomez,* involved the expenditure and use of substantial federal funds by the state pursuant to the pertinent statute and regulations. *Euresti, supra,* 458 F.2d at 1117, 1118; *Gomez, supra,* 417 F.2d at 572.

The Court of Appeals below correctly applied the criteria

set forth by this Court in a numer of decisions. For example, in *Nashville Milk Co. v. Carnation Co.*, 355 U.S. 373 (1958), this Court held that no private cause of action was created by § 3 of the Robinson-Patman Act, 15 U.S.C. § 13a, and that § 4 of the Clayton Act, 15 U.S.C. § 15 (which authorizes private suits under the antitrust laws) did not apply to suits under § 3 of the Robinson-Patman Act in the absence of express statutory authorization for such a remedy. The Court stated:

> "Further, § 3 contains only penal sanctions for violation of its provisions; in the absence of a clear expression of congressional intent to the contrary, these sanctions should under familiar principles be considered exclusive, rather than supplemented by civil sanctions of a distinct statute [the Clayton Act]." 355 U.S. at 377.

See also, T.I.M.E., Inc. v. United States, 359 U.S. 464 (1959); *Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U.S. 246 (1951), *Consolidated Freightways v. United Truck Lines, Inc.*, 216 F.2d 543 (9th Cir. 1954), *cert. denied*, 349 U.S. 905 (1955).

These decisions are fundamentally grounded on the traditional separation of the judicial and legislative processes. As stated by the Court of Appeals below:

> "But in the cases at bar the substantive rights relied upon by the appellants have been promulgated by Congress in the exercise of its power to enact penal statutes. In effect, appellants urge this court, under its classical adjudicative power, to legislate. When Congress was dealing with the subject matter of the statutes here involved, it was capable of clearly and directly providing the rights and remedies urged by the appellants. Fur-

> thermore, in the *Chavez* case we have observed that a Resolution is presently before Congress, directed toward the same practices which the appellants are complaining of here. We are dealing with a political question beyond the jurisdiction of the courts to determine with the 'potentiality of embarrassment from multifarious pronouncements by various departments on one question'. Baker v. Carr, 369 U.S. 186 at 217, 82 S.Ct. 691 at 710, 7 L.Ed.2d 663 (1962)." 456 F.2d at 895.

See also, Blaney v. Florida Nat. Bank, 357 F.2d 27, 30 (5th Cir. 1966); *Royal Services, Inc. v. Maintenance, Inc.*, 361 F.2d 86, 92 (5th Cir. 1966); *McFaddin Express, Inc. v. Adley Corp.*, 240 F. Supp. 791 (D. Conn. 1965), *aff'd*, 346 F.2d 424, *cert. denied*, 382 U.S. 1026 (1966); *Massachusetts Universalist Convention v. Hildreth & Rogers Co.*, 183 F.2d 497 (1st Cir. 1950); *Daly v. West Central Broadcasting Co.*, 309 F.2d 83 (7th Cir. 1962); *Gordon v. National Broadcasting Co.*, 287 F. Supp. 452 (S.D.N.Y. 1968).

In essence, the courts are in agreement as to the objective criteria to be applied in determining whether a private cause of action should be created by implication from a federal regulatory statute. Respondents submit that those decisions which have implied such a remedy are fundamentally consistent with those which have not, including the decision herein, and that review by this Court is not necessary or appropriate in this instance.

2. The applicable statutes herein contain express administrative and penal sanctions and enforcement procedures and do not create, either expressly or by implication, privately enforceable causes of action.

In *Chavez, et al.*, No. 71-1177 below, petitioners assert that respondents employ aliens present in this country in violation of federal immigration laws, contained in Chapter 12 of Title 8 of the United States Code. Title 8 establishes a comprehensive and lengthy statutory scheme dealing with all aspects of the immigration and naturalization of persons who seek entry into the United States. This statutory scheme has been continuously enacted, revised and recodified for more than 150 years, reflecting Congress' continuing attention to this area of its constitutional responsibility. *U. S. Const.*, Art. I, § 8, cl. 4.

Petitioners do not object to any portion of this regulatory construct, but rather are dissatisfied with asserted inadequacies or inefficiencies in its administration and enforcement by the Department of Justice and the Immigration and Naturalization Service. (Pet. 7-8, 12.) Based upon this dissatisfaction, petitioners select two sections of the statute, the violation of which, they assert, gives rise to a private right of action on behalf of petitioners and the class they purport to represent. However, examination of the statutory sections upon which petitioners rely and the legislative history of the immigration laws demonstrates that private enforcement was not intended by Congress.

The Attorney General of the United States has been vested with broad power to administer and enforce the immigration laws. 8 U.S.C. § 1103. To implement this statutory command, Congress has given the Attorney General a wide variety of enforcement tools, including the criminal sanctions contained in 8 U.S.C. §§ 1321-28, as well as the power to levy fines, withhold port clearances and attach vessels and aircraft pursuant to 8 U.S.C. §§ 1221, 1227, 1229, 1253, 1281, 1284-86, 1321, 1323 and 1330. Most important, the Attorney General may exclude or deport illegal entrants under 8 U.S.C. §§ 1226 and 1252.

The Immigration and Naturalization Service is the agency charged with primary administrative and enforcement responsibilities under the immigration laws. The INS is a complex world-wide organization with 37 district offices, including Denver, Colorado. 8 C.F.R. § 100.4. There are within the INS, Assistant Commissioners of Enforcement, Investigations, Field Inspection and Security, and Detention and Deportation, each of whom are charged with responsibilities for enforcement of the immigration laws. 8 C.F.R. § 100.2. Further, INS border patrol officers are specifically authorized to arrest and detain suspected illegal entrants and to investigate possible violations of the immigration laws. 8 C.F.R. Part 287.

Petitioners are dissatisfied with the implementation and application of these enforcement tools, and seek to imply a right to private enforcement, primarily under 8 U.S.C. § 1182(a)(14), as amended by Congress in 1965. 79 Stat. 911 (1965). Among substantial revisions to the immigration statutes in 1965, Congress altered 8 U.S.C. § 1182 (a)(14) to require affirmative certification by the Secretary of Labor that an alien seeking an immigrant visa to work in the United States would not adversely affect the working conditions of domestic workers similarly employed. 79 Stat. 911 (1965). Of course, this section applies only to aliens themselves and provides for their exclusion if the standards of the section are not complied with.

Both the House and Senate debates in 1965 are instructive not only because they show that the amendments did not alter prior law concerning nonimmigrant workers,[1] under which no private remedy had ever been held to exist, but more significantly because they carry the strong inference that administration and enforcement of these laws was

[1] *See*, 111 *Cong. Rec.* at 24,230-31 (September 17, 1954).

intended to remain in the Department of Justice, acting in certain instances upon the recommendations of the Department of Labor. Early in the House discussions, Representative Halpern had pointed out that "under the present law, the Secretary of Labor has the responsibility of excluding any immigrant who might displace an American laborer." 111 *Cong. Rec.* at 21,779 (August 25, 1965). A later exchange of comments between Representatives Celler and Moore further discusses the protection of domestic laborers from alien competition.

Mr. Celler: "Secondly, does not the gentleman feel we have offered in this bill ample protection to labor and also does not the gentleman feel it is unnecessary to go beyond what we have done in this bill to protect labor?"

Mr. Moore: "The gentleman from New York is eminently correct." 111 *Cong. Rec.* at 21,806 (August 25, 1965).

Nowhere in the House or Senate debates does there appear any hint of a Congressional intent to create private causes of action under these statutes. On the contrary, as the legislative history discloses, Congress made no change in the enforcement responsibility, which continued to lie with the Attorney General pursuant to 8 U.S.C. § 1103.

Nor does petitioners' reliance upon the criminal sanctions of 8 U.S.C. § 1325 buttress their claim to a private cause of action. This criminal statute does not apply to persons, such as these defendants, who are alleged to have employed illegal entrants. In addition, employment of an illegal entrant is deemed not to constitute "harboring" under the penal sanctions of 8 U.S.C. § 1324(a). *See also,* 98 *Cong. Rec.* at 797-98 (February 5, 1952); 98 *Cong. Rec.* at 1413 (February 17, 1952). Petitioners do not seek to imply a cause of

action against those persons who allegedly have violated 8 U.S.C. § 1325, illegal entrants, but against third parties who are not alleged to have violated the statute in any respect. Neither judicial precedent nor statutory construction would support such an attenuated result.

These considerations apply with equal force to the Farm Labor Contractor Registration Act, 7 U.S.C. §§ 2041-53, relied on by petitioners in *Sanchez, et al.*, and *Olguin, et al.*

The Farm Labor Contractor Registration Act was enacted in 1964 to require registration of those who recruit agricultural workers in interstate commerce, 7 U.S.C. § 2041, and comprehensive regulations for enforcement of the Act have been promulgated, 29 C.F.R. § 40.1 *et seq.* The Secretary of Labor is vested with responsibility for administration of the Act, is given broad discretion to issue and suspend or revoke certificates of registration which farm labor contractors must possess in order to do business, § 2044, and is authorized to enter into agreements with other federal and state agencies as deemed necessary to carry out the provisions of the Act. § 2047. Certificates of farm labor contractors may be revoked or suspended by the Secretary of Labor if he finds, after an administrative hearing, that violations of the Act have occurred. 7 U.S.C. § 2044(b). In addition to suspension or revocation of certificates, the Act further provides, in a section entitled *"Penalties"*, for fines of up to $500 for willful violations of the Act or regulations enacted thereunder. 7 U.S.C. § 2048. The Act also states that any person aggrieved by violations of the Act may file a complaint with the Secretary of Labor who then may conduct an investigation to determine whether a violation has occurred. 7 U.S.C. § 2046. *See also*, 29 C.F.R. § 40.02.

None of these petitioners have alleged that they have filed a complaint with the Secretary of Labor as authorized by the Act. Nor have petitioners cited any indication that Congress intended to create any remedies under the Act other than those expressed therein. That Congress considered and was fully aware of the remedies contained in the Act is aptly demonstrated by Representative Powell's remarks during House discussion of the bill:

> "The certificate of registration may be refused, revoked or suspended if the abuses . . . are discovered in the case of any farmworker." 110 *Cong. Rec.* 19,894 (August 17, 1964).

Nowhere in the House or Senate debates is there any indication that Congress intended to fashion remedies other than those expressly provided. *See,* 110 *Cong. Rec.* at 19,842, 19,892, 40,874. On the contrary, Congress expressly vested the Secretary of Labor with the responsibility for enforcing and administering the Act and for investigating violations reported to him by individuals who claim to be aggrieved.

Congress is fully aware of its power to create private causes of action under regulatory legislation. For example, private actions seeking recovery of unpaid minimum wages are expressly authorized under the Fair Labor Standards Act by 29 U.S.C. § 216. Similarly, private parties are authorized—again expressly and explicitly—to seek both damages and injunctive relief for violations of the federal antitrust laws by §§ 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26. In legislating with respect to a particular class of persons similar in many ways to the group petitioners purport to represent, Congress has shown that it can and will, if it chooses to do so, specifically confer the right to bring a private action for enforcement of federal law. *See, e.g.,*

Title VII of the Civil Rights Act of 1964, § 706(e), 42 U.S.C. § 2000e-5(e). Similarly, in 42 U.S.C. § 3612, the Civil Rights Act of 1968 contains clear authorization of such private actions.

In contrast, all of the statutes cited by petitioners give not the slightest hint that Congress intended to create or allow private damage or injunction actions based on their alleged violation. Further, not only are the statutes silent in this regard, but their legislative history and express provisions negate any supposition that Congress intended to create such remedies.

Moreover, legislation is pending and hearings have been conducted by the present Congress with respect to the alleged practices of which petitioners complain. House Resolution 2328, as referred to the House Judiciary Committee, would delete the employment proviso of 8 U.S.C. § 1324(a), H.R. 2328, § 26(a), and would extend the application of 8 U.S.C. § 1182(a)(14) to nonimmigrant aliens, H.R. 2328, § 13. H.R. 2328 was recently approved, in substantially altered form, by the Judiciary Committee and is slated for floor consideration when Congress reconvenes in September, 1972. 118 *Cong. Rec.* D-929 (August 15, 1972); Denver Post, August 16, 1972, at 21, col. 6.

Petitioners concede that none of the statutes on which they rely expressly create rights privately enforceable in the federal courts, unlike numerous other federal regulatory statutes and unlike the state cause of action expressly provided by the Colorado statutes cited as alternative grounds for relief in *Olguin, et al.* and *Sanchez, et al.* Petitioners seek such a remedy despite legislative history which indicates that Congress did not intend to create such rights, and despite the continuing attention of Congress to the statutes

and matters of concern herein. In essence, petitioners seek judicial alteration of these statutes. Such alteration is properly the concern and responsibility of the legislative branch, rather than the judiciary.

CONCLUSION

Respondents respectfully submit that the petition for a writ of certiorari should be denied.

William C. McClearn
David G. Palmer

500 Equitable Building
Denver, Colorado 80202
Telephone: 292-9200

Attorneys for Respondents
Great Western Sugar Company,
Great Western Employment
Agency, Inc.,
and Freshpict Foods, Inc.

Of Counsel:
HOLLAND & HART

APPENDIX

8 U.S.C. § 1324 20

1963 Colo. Rev. Stat. Anno.
§§ 80-11-4, 80-11-7 21

8 United States Code

§ 1324. Bringing in and harboring certain aliens; persons liable; authority to arrest

(a) Any person, including the owner, operator, pilot, master, commanding officer, agent, or consignee of any means of transportation who—

(1) brings into or lands in the United States, by any means of transportation or otherwise, or attempts, by himself or through another, to bring into or land in the United States, by any means of transportation or otherwise;

(2) knowing that he is in the United States in violation of law, and knowing or having reasonable grounds to believe that his last entry into the United States occurred less than three years prior thereto, transports, or moves, or attempts to transport or move, within the United States by means of transportation or otherwise, in furtherance of such violation of law;

(3) willfully or knowingly conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, in any place, including any building or any means of transportation; or

(4) willfully or knowingly encourages or induces, or attempts to encourage or induce, either directly or indirectly, the entry into the United States of—

any alien, including an alien crewman, not duly admitted by an immigration officer or not lawfully entitled to enter or

reside within the United States under the terms of this chapter or any other law relating to the immigration or expulsion of aliens, shall be guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding $2,000 or by imprisonment for a term not exceeding five years, or both, for each alien in respect to whom any violation of this subsection occurs: *Provided, however,* That for the purposes of this section, employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring.

(b) No officer or person shall have authority to make any arrest for a violation of any provision of this section except officers and employees of the Service designated by the Attorney General, either individually or as a member of a class, and all other officers whose duty it is to enforce criminal laws.

June 27, 1952, c. 477, Title II, ch. 8, § 274, 66 Stat. 228.

1963 Colorado Revised Statutes Annotated

80-11-4. Obtaining workmen by misrepresentation unlawful. — It shall be unlawful for any person, company, corporation, society, association or organization of any kind doing business in this state, by himself, his, or its agents or attorneys, to induce, influence, persuade or engage workmen to change from one place to another in this state, or to bring workmen of any class or calling into this state to work in any of the departments of labor in this state, through or by means of false or deceptive representations, false advertising or false pretenses concerning the kind and charatcer of the work to be done, or amount and character of the compensation to be paid for such work, or the sanitary or other conditions of the employment, or as to the existence or nonexistence of a strike or lockout pending between employer

and employees, or failure to state in any advertisement, proposal, or contract for the employment that there is a strike, lockout, or other labor troubles at the place of the proposed employment, when in fact such strike, lockout or other labor troubles then actually exist at such place, shall be deemed as false advertisement and misrepresentation for the purposes of sections 80-11-4 to 80-11-7.

Source: L. 11, p. 486, § 1; C. L. § 4156; CSA, C. 97, § 71; CRS 53, § 80-4-4.

80-11-7. Workman engaged by false representations to recover damages. — Any workman of this state, or any workman of another state who shall be influenced, induced or persuaded, to engage with any persons mentioned in section 80-11-4, through or by means of any of the things therein prohibited, each of such workmen shall have a right of action for recovery of all damages that each such workman has sustained in consequence of the false or deceptive representations, false advertising and false pretenses used to induce him to change his place of employment, against any person or persons, corporations, companies or associations, directly or indirectly, causing such damages. In addition to all actual damages such workmen may have sustained, they shall be entitled to recover such reasonable attorney's fees as the court shall fix, to be taxed as costs in any judgment recovered.

Source: L. 11, p. 487, § 4; C. L. § 4159; CSA, C. 97, § 74; CRS 53, § 80-4-7.